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Cross-Border Investment, particularly Foreign Direct Investment
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EXPERIENCES WITH BILATERAL AND REGIONAL APPROACHES TO MULTILATERAL COOPERATION IN THE AREA OF LONG-TERM CROSS-BORDER INVESTMENT, PARTICULARLY FOREIGN DIRECT INVESTMENT

Note by the UNCTAD secretariat

EXECUTIVE SUMMARY

International rule-making on investment issues is multifaceted and spans the bilateral, regional, interregional and multilateral levels. It has taken the form of binding or voluntary instruments setting out a number of commitments that vary in strength and has taken place against a background of significant autonomous liberalization of investment regimes. Recent BIT practice tends to reaffirm the traditional role of BITs, which provide investment protection and generally guarantee non-discriminatory treatment after investment has been established in host countries. The universe of regional instruments on investment or containing investment rules (RIAs) is not of the same magnitude as the BIT universe, but is still vast and diverse. While BITs have a distinct focus on investment protection, RIAs are generally geared towards liberalization, even though an important number of them also address protection issues. The role of BITs in respect to specific development commitments lies primarily in the contribution they can make to promote investment by helping to secure a welcoming and stable environment for foreign investment. At the same time, they allow considerable latitude for the application of national law and policy, thus providing developing countries with flexibility to pursue their individual policy objectives. Some RIAs have adopted development-oriented provisions including various exceptions; safeguards and transition periods that are meant to cater for the different objectives and needs of parties at different levels of development.

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INTRODUCTION

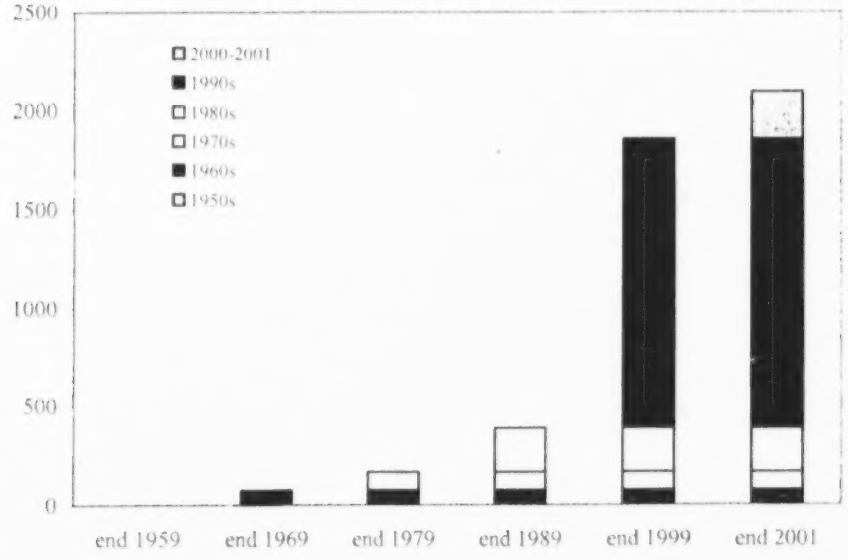
1. The Commission on Investment, Technology and Related Financial Issues, at its sixth session (21 - 25 January 2002), decided to convene an intergovernmental Expert Meeting on Experience with Bilateral and Regional Approaches to Multilateral Cooperation in the Area of Long-Term Cross-Border Investment, particularly Foreign Direct Investment. The Commission considered that, in light of the Doha Ministerial Declaration, this Expert Meeting could shed light on the issue of the implications of closer multilateral cooperation in the area of cross-border investment, particularly foreign direct investment, for the development policies and objectives of developing countries. More specifically, the Meeting will undertake a stocktaking of common elements and experiences with bilateral and regional approaches and other initiatives in this area, and outline the challenges that have emerged in negotiations and approaches. It will also focus on the evolution of these approaches in the national, regional and international contexts, with a view to highlighting common and different elements in them and addressing how the development dimension has been and could be taken into account.

2. International rule-making on investment issues is multifaceted and spans the bilateral, regional, interregional and multilateral levels. It has taken the form of binding or voluntary instruments setting out a number of commitments, which vary in strength, and it has taken place against a background of significant autonomous liberalization of investment regimes in virtually all developing countries. This note reviews bilateral approaches (especially bilateral investment treaties) and regional investment instruments (RIAs), examining, first, the commonalities between instruments, secondly, the main differences between them and, third, trends over the past five to ten years. It then briefly discusses issues related to the development dimension of these agreements.

I. BILATERAL APPROACHES

3. Originally, investment issues between States were addressed in broad bilateral agreements, of which the treaties of friendship, commerce and navigation were typical. Since 1959, specialized treaties – bilateral investment treaties (BITs) – have emerged as the principal instruments for this purpose.[1] Since the adoption of the first BIT in 1959, the number of such treaties grew steadily to 385 by the end of 1989 and had jumped to 2,096 by the end of 2001 (figures 1 and 2).[2] The BIT network grew rapidly in the 1990s, as more developing countries and economies in transition signed treaties with a wider range of developed countries and started to sign BITs between themselves. The number of countries and territories involved in the conclusion of BITs also grew to reaching 174 at the end of 2001.[3]

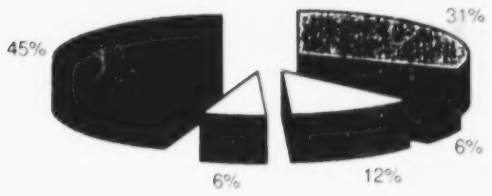
Figure 1. Growth of the number of BITs, 1959-2001



Source: UNCTAD database on BITs.

[1] For a survey of the network of BITs see UNCTAD, (2000a), for a discussion of BITs see UNCTAD, (1998).
[2] Countries have also been concluding agreements for the avoidance of double taxation, the number of which had reached 2,118 by the end of 2000. These address, among other things, the allocation of taxable income, including with a view to reducing the incidence of double taxation.
[3] A number of model BITs are reproduced in several volumes of *International Investment Instruments: A Compendium* (UNCTAD, 1996, 2000b and 2001).

Figure 2. BITs concluded in 2001, by country group



Source: UNCTAD database on BITs.

- Between developed countries and developing countries
- Between developed countries and countries of Central and Eastern Europe
- Between countries of Central and Eastern Europe and developing countries
- Between countries of Central and Eastern Europe
- Between developing countries

4. During the past few years, there appears to have been however a certain return to the practice of dealing with investment issues in other instruments as well, notably in bilateral free trade agreements (which appear to be increasingly becoming free investment agreements as well) and in association agreements of the European Union.[4] These agreements often go beyond BITs by including liberalization provisions. This section focuses on BITs since they are still the dominant form of bilateral agreements dealing with investment issues.

A. Similarities

5. A distinctive feature of BITs is that their overall format, substantive scope and content have remained largely unchanged over the past 40 years. Their main provisions typically deal with the scope and definition of foreign investment and investor; admission of investment; national and most-favoured-nation (MFN) treatment; fair and equitable treatment; legal protection in respect of expropriation and free transfer of funds and repatriation of capital and profits; and dispute-settlement provisions, both State-to-State and investor-to-State. However, the formulations of individual provisions remain rather varied. In particular, there are important differences between the language of BITs signed some decades ago and the more recent ones.

6. As far as similarities in the substantive provisions of BITs are concerned, the following observations can be made:

[4] A number of these agreements are reproduced in several volumes of *International Investment Instruments: A Compendium* (UNCTAD, 1996, 2000b, 2001)

- They typically use an asset-based definition of investment that is broad and open-ended, covering tangible and intangible assets, and direct as well as portfolio investment; it generally applies to existing as well as new investments. But there are also BITs that include narrower definition, e.g. by focussing on foreign direct investment (FDI) only.

- The entry and the establishment of investment are encouraged, although in most BITs they are subject to the national law of the host country.

- Investment promotion is weak and based mainly on providing strong protection standards that, in turn, are expected to create a favourable investment climate.

- Most BITs provide for a series of standards of treatment once an investment has been established. In current practice, these include national treatment and MFN treatment, which are typically defined as "treatment no less favourable than ...". There are also a number of standardized exceptions to these treatments relating to taxation instruments and to special privileges granted by reason of the countries' membership of free trade areas and regional integration frameworks. Also common in BIT practice are standards of fair and equitable treatment, full protection and security, and prohibition of arbitrary and discriminatory measures.

- In current BITs, the terms "expropriation" and "nationalization" include, explicitly or implicitly, measures tantamount or equivalent to expropriation. Hence, they are understood to apply the expropriation provisions to "indirect" expropriations and "creeping" expropriations. Most BITs adopt the traditional rule of international law that a State may not expropriate the property of an alien except for a public purpose, in a non-discriminatory manner, in accordance with due process of law and upon payment of compensation.

- The great majority of BITs has a provision on the transfer of payments. Current BITs guarantee the free transfer of payments related to, or in connection with, an investment. They often include a list of the types of payments covered by the transfer provisions. In some instances, BITs include an exception on a temporal basis for balance-of-payments considerations.

- BITs include provisions for the resolution of disputes between a State and investors of the other State, and between the States parties to the treaty. With regard to disputes between a host country and investors of the other party, many BITs provide for recourse to agreed international dispute-settlement mechanisms. While there are several variations in current practise, the general trend is to give investors a choice of arbitral mechanisms through institutions such as the International Centre for Settlement of Investment Disputes and the affiliated Additional Facility, the International Chamber of Commerce or various regional arbitration centres. The methods and procedures for resolving disputes between States parties to BITs involving the application of the treaty are typically spelt out in a rather elaborate set of provisions.

B. Differences

7. The main differences among the most common substantive provisions of BITs include the following:

■ Some countries' BIT practice (notably that of Canada and the United States) goes beyond that of most other BITs by providing that host countries grant the better of MFN and national treatment with regard to entry and establishment of investments. The right is qualified by a list of exceptions. This means that, subject to exceptions agreed in the treaty, host countries have to treat, with respect to admission, potential investors in the same manner as they treat their own investments or those from other countries. Thus, in contradistinction to general BIT practice, this approach brings about the liberalization of investment entry and establishment through the granting of national and MFN treatment, subject to agreed exceptions.

■ Some BITs do not grant the national treatment standard. The coverage of national treatment obligations may also vary depending on exceptions relating to public order and national security. Specific exceptions to national treatment may also be granted to allow for special treatment (e.g. incentives) to be provided to local companies or on a sectoral basis.

■ Some BITs (notably in current Canada and United States practice) include prohibition or discouragement of certain types of performance requirements. Prohibition, however, does not normally preclude the granting of some specific types of incentives to obtain a certain performance by foreign investors.

■ In spite of a high degree of consistency in BIT practice concerning the settlement of disputes, some BITs make the availability of investor - State dispute settlement conditional upon the prior exhaustion of local remedies.

■ A number of recent BITs include general exceptions (e.g. cultural exceptions, sectoral exceptions or exclusion of certain types of investments, such as portfolio transactions) which limit the substantive scope of the treaty.

■ A few recent BITs include a provision allowing for national measures aimed at protecting the environment.

C. Changes over time

8. In spite of many variations, the principal constituent elements of BITs have become rather uniform over the years. In essence, recent BIT practice tends to reaffirm the traditional role of BITs, which is to provide for international protection and, generally, guarantees of non-discriminatory treatment after investments have been established. Initiatives to include liberalization provisions – especially as regards the entry and establishment of investments – do not appear to have been emulated in recent BITs by other countries, allowing host countries to design their investment policies in accordance with their needs, level of development and their development priorities. Similarly, the initiative to include a clause explicitly addressing certain performance requirements (usually to prohibit them) appears not

to have been, in the main, pursued in the new BITs signed by other countries. Of course, this does not mean that these other countries are not interested in investment liberalization issues; rather, it suggests that they prefer to use other instruments to address these issues.

9. An issue that lingers on from traditional BIT practice and has not been addressed in many of the new BITs is the possibility of strengthening the promotion provisions of these treaties with more explicit and concrete commitments. In conclusion, it should be noted that what might be acceptable to a country at the bilateral level, may not necessarily be acceptable in the same formulation at the regional level.

D. Questions

10. Against this background, a number of questions present themselves for consideration:

- How important are BITs for investors? What is the degree of comfort provided by BITs to foreign investors in terms of safety and security of their investments? What has been the experience with them? To what extent has recourse been had to them?

- What are the implications of the evolving discussions in the area of expropriation for the right of countries, and especially developing countries, to regulate matters related to foreign investment?

- Are the similarities described above indeed the principal similarities amongst BITs? Are there any other noteworthy differences? Are there any other trends that have emerged?

- Are any implications emerging from the growth pattern of BITs?

- Do the objectives, format, scope and substantive content of BITs adequately address key concerns of host and home countries in the area of foreign investment? What additional provisions would make investors more comfortable about undertaking investments? To what extent would it be useful to address issues that do not currently figure explicitly in BITs? Are there any issues that would need to be addressed in a different manner?

- What are the similarities, differences and trends in bilateral treaties other than BITs in terms of addressing investment issues?

- To what extent and in what manner are BITs (and other bilateral treaties) influencing the elaboration of international investment rules at the regional and multilateral levels?

II. REGIONAL APPROACHES

11. The universe of regional instruments on investment or containing investment rules (RIAs) is not of the same magnitude as the BIT universe, but is still vast and diverse (annex table). The regional agreements addressing investment issues that are growing fastest in terms of numbers are those generally referred to as free trade agreements and regional integration frameworks.[5] By 2000, the number of such agreements had already exceeded 170.[6] NAFTA, the MERCOSUR Protocols and the COMESA Treaty are examples. An increasing number of these agreements include investment provisions, as do several other regional agreements that do not aim specifically at regional integration. However, only a few instruments are entirely devoted to investment, such as the Framework Agreement on the ASEAN Investment Area, and the Andean Community's Decision 291 (adopted in 1991).[7] The main aim of these agreements is typically to liberalize investment transactions and avoid discriminatory treatment amongst the countries participating in the regional scheme. Increasingly, they also include legal protection standards and promotional measures.

12. In addition, some regional groups have also developed common regimes for investments with third countries. For example, the Cotonou Agreement between the European Union and the group of African, Caribbean and Pacific (ACP) countries contains investment principles aimed at promoting European investment in the ACP countries.

A. Similarities

13. In spite of the great variety of RIAs, some common elements can be discerned. Regarding the definition of investment, some older agreements, such as the OECD Codes of Liberalisation of Capital Movements and Current Invisible Transactions, use a narrow enterprise-based type of definition. The new generation of agreements aimed at the liberalization of investment tend to use broad and inclusive definitions, although they often exclude certain transactions (e.g. the ASEAN Investment Area excludes portfolio transactions). Provisions on investment promotion can be found in several RIAs. A large number of RIAs include provisions on the free transfer of funds related to investments. Similarly, exceptions for balance-of-payments considerations are included in a growing number of RIAs. In so far as dispute resolution is concerned, some RIAs provide for the possibility of settling disputes by means of consultation and negotiation, whereas others provide for consultation through the body (e.g. the cooperation or association council) entrusted with the monitoring and implementation of the specific agreement. A number of RIAs contain detailed rules that provide for international arbitration of disputes between a party and an investor of another party.

B. Differences

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[5] For the purpose of this note, regional free trade agreements also include bilateral free trade agreements, since both types of agreements share essentially the same broad characteristics and objectives, their main difference being the number of countries involved.

[6] See WTO, (2000). Relevant investment clauses are reproduced in several volumes of *International Investment Instruments: A Compendium* (UNCTAD, 1996, 2000b, 2001).

[7] These agreements – as well as those mentioned below – are reproduced in several volumes *of International Investment Instruments: A Compendium* (UNCTAD, 1996, 2000b, 2001).

14. The issue of entry and establishment of investment in RIAs is addressed in a variety ways, with a number of recent RIAs granting national and MFN treatment upon entry, often subject to sectoral and other exceptions. Some RIAs go further to provide a right of establishment. Some RIAs include a system of reporting of existing regulations and changes thereof to ensure transparency of measures. Some also include provisions to monitor compliance.

15. RIAs also tend to differ in their provisions relating to performance requirements, with some addressing them in detail. There are also differences with regard to the types of requirements covered and their treatment. With regard to investment promotion issues, the treatment is varied: some instruments address a wide array of promotional measures, while other instruments are silent on the matter. A number of RIAs include protection standards, following the BIT provisions in this area. Finally, the range of investment-related issues covered at this level varies considerably among agreements. In addition to agreements devoted solely to one issue (e.g. illicit payments, competition), an increasing number of RIAs include provisions on investment – related issues such as environmental protection, competition, transfer of technology, employment, incentives and conflicting requirements.

C. Changes over time

16. RIAs have multiplied in number and are increasingly addressing investment issues. As such they have created an intricate web of commitments. While BITs focus on investment protection, and generally, non-discriminatory treatment, RIAs are generally geared towards liberalization, even though a substantial number of them also address protection and treatment.

17. A new issue that appears to be emerging (and that is largely absent from BITs) concerns provisions for monitoring mechanisms to follow up on commitments. They typically include corresponding obligations on countries to provide information.

D. Questions

18. Against this background, a number of questions present themselves for consideration:

■ Are the similarities described above indeed the principal similarities amongst RIAs? Are there any other noteworthy differences? Are there any other trends that deserve attention?

■ To what extent have recent RIAs influenced BIT practice, and vice versa? What are the main areas of convergence and divergence between these two processes? What are the reasons for the differences between BITs and RIAs? Are there any significant inconsistencies?

■ What has been the experience with investment liberalization effected by RIAs? Has the actual liberalization negotiated through RIAs been significant?

■ How much liberalization of investment regimes is due to RIAs as opposed to autonomous liberalization? Have the two processes been mutually reinforcing? Have RIAs locked in autonomous liberalization and ensured policy stability?

■ Beyond the improved market access opportunities generally created by RIAs, what has been the impact of RIA-induced liberalization on promoting FDI in RIA signatories? What has been the experience with national treatment at the pre-establishment phase?

■ Would it be important to address issues that do not currently figure prominently in most RIAs? If so, which ones are they?

III. THE DEVELOPMENT DIMENSION

19. The specific development commitments of BITs remain very limited. The role of BITs in this respect lies primarily in the contribution they can make to promoting investment by helping to secure a welcoming and stable environment for foreign investment. At the same time, they allow considerable latitude for the application of national law and policy – especially as regards the admission of foreign investment, the imposition of operational conditions and the granting of incentives – thus providing developing countries with flexibility to pursue their individual policy objectives. They also contain exceptions to general principles (e.g. for balance-of-payments considerations) which address developmental concerns. However, as current BIT practice stands, they do not in general contain provisions that provide for active measures regarding such matters as transfer of technology, technical cooperation, or specific home country commitments.

20. By contrast, some RIAs have explicitly adopted development-oriented provisions. These include various exceptions, safeguards and transition periods that are meant to cater to the different objectives and needs of parties at different levels of development. These qualifications may apply to all substantive provisions and have a particular importance with regard to the standards of treatment, both pre- and post-entry. A special category of exceptions also affects the repatriation of funds. Another set of development-related provisions refers to investment promotion and facilitation.

21. A number of RIAs contain significant provisions for the exchange of information with regard to investment opportunities. Possibly the most extensive provisions on investment promotions are included in the 2000 Cotonou Agreement, which builds on the provisions of the previous Lomé Conventions.

22. Against this background, a number of questions present themselves for consideration:

■ Are there certain development objectives for host developing countries that are typically not covered by BITs but should be? Is there any need to do more in BITs on investment promotion issues? Does the provision in most BITs that investments are permitted in

accordance with the laws and regulations of host countries offer adequate flexibility for developing countries to pursue their development objectives?

- Are the "flexibility" mechanisms provided for in RIAs (e.g. exceptions, waivers, transition periods, safeguards) sufficient to enable host developing countries to pursue their development strategies and benefit most from foreign investment?

- Is the attention devoted in RIAs to investment promotion issues sufficient?

- What has been the experience with RIAs in terms of providing regional content in investments within the region? How have they contributed to regional integration and development?

- What can be done to enhance the development potential of BITs, other bilateral treaties addressing investment issues and RIAs? Do home country measures and investor obligations need to be addressed?

CONCLUSION

23. Many questions of relevance to the development dimension of investment rules remain to be explored. Also there is a need for further clarification of the interrelationship between existing standards of investment liberalization, protection and promotion and the best means by which development concerns can be expressed and reflected in the evolution of international investment agreements. In this regard, it may be useful to seek inspiration from voluntary instruments developed by non-governmental organizations, corporations, and other groups that are of direct relevance to the proper functioning of foreign investment relations.

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Annex table. Main regional and interregional instruments dealing with FDI, 1957-2002

Year[b]	*Title*	*Setting*	*Level*	*Form*	*Status*
1957	Treaty Establishing the European Economic Community	European Economic Community	Regional	Binding	Adopted
1957	Agreement on Arab Economic Unity	Council of Arab Economic Unity	Regional	Binding	Adopted
1961	Code of Liberalisation of Capital Movements	OECD	Regional	Binding	Adopted
1961	Code of Liberalisation of Current Invisible Operations	OECD	Regional	Binding	Adopted
1963	Model Tax Convention on Income and on Capital	OECD	Regional	Model	Adopted
1965	Common Convention on Investments in the States of the Customs and Economic Union of Central Africa	Customs and Economic Union of Central Africa	Regional	Binding	Adopted
1967	Revised Recommendation of the Council Concerning Co-operation Between Member Countries on Anticompetitive Practices Affecting International Trade	OECD	Regional	Non-binding	Adopted
1967	Draft Convention on the Protection of Foreign Property	OECD	Regional	Non-binding	Not adopted
1969	Agreement on Andean Subregional Integration	Andean Common Market	Regional	Binding	Adopted
1969	Agreement Establishing an Association between the European Economic Community and the Malagasy States	European Community - Malagasy States	Interregional	Binding	Adopted
1969	Agreement Establishing an Association between the European Economic Community and the United Republic of Tanzania, the Republic of Uganda and the Republic of Kenya	European Community - Tanzania, Uganda and Kenya	Interregional	Binding	Adopted
1970	Agreement on Investment and Free Movement of Arab Capital among Arab Countries	Arab Economic Unity	Regional	Binding	Adopted

1970	Decision No. 24 of the Commission of the Cartagena Agreement: Common Regulations Governing Foreign Capital Movement, Trade Marks, Patents, Licenses and Royalties	Andean Common Market	Regional	Binding	Superseded
1971	Convention Establishing the Inter-Arab Investment Guarantee Corporation	Inter-Arab Investment Guarantee Corporation	Regional	Binding	Adopted
1972	Joint Convention on the Freedom of Movement of Persons and the Right of Establishment in the Central African Customs and Economic Union	Central African Customs and Economic Union	Regional	Binding	Adopted
1973	Agreement on the Harmonisation of Fiscal Incentives to Industry	Caribbean Common Market	Regional	Binding	Adopted
1973	Treaty Establishing the Caribbean Community	Caribbean Community	Regional	Binding	Adopted
1975	The Multinational Companies Code in the UDEAC	Customs and Economic Union of Central Africa	Regional	Binding	Adopted
1976	Declaration on International Investment and Multinational Enterprises	OECD	Regional	Binding/ non-binding[c]	Adopted
1979	ECOWAS Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment	Economic Community of West African States	Regional	Binding	Adopted
1980	Cooperation Agreement between the European Community and Indonesia, Malaysia, the Philippines, Singapore and Thailand, member countries of the Association of South-East Asian Countries	ASEAN - EC	Interregional	Binding	Adopted
1980	Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data	OECD	Regional	Non-binding	Adopted
1980	Unified Agreement for the Investment of Arab Capital in the Arab States	League of Arab States	Regional	Binding	Adopted
1980	Treaty Establishing the Latin American Integration Association (LAIA)	LAIA	Regional	Binding	Adopted

1981	Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data	Council of Europe	Regional	Binding	Adopted
1981	Agreement on Promotion, Protection and Guarantee of Investments among Member States of the Organization of the Islamic Conference	Islamic Conference	Regional	Binding	Adopted
1981	Treaty for the Establishment of the Preferential Trade Area for Eastern and Southern African States	Preferential Trade Area for Eastern and Southern African States	Regional	Binding	Adopted
1982	Community Investment Code of the Economic Community of the Great Lakes Countries (CEPGL)	CEPGL	Regional	Binding	Adopted
1983	Treaty for the Establishment of the Economic Community of Central African States	Economic Community of Central African States	Regional	Binding	Adopted
1984	ECOWAS Protocol A/P1/11/84 Relating to Community Enterprises	Economic Community of West African States	Regional	Binding	Adopted
1985	ECOWAS Supplementary Protocol A/Sp.1/7/85 on the Code of Conduct for the Implementation of the Protocol on Free Movement of Persons, the Right of Residence and Establishment	Economic Community of West African States	Regional	Binding	Adopted
1985	Agreement on the Establishment of a Free Trade Area between the Government of Israel and the Government of the United States of America	Israel - United States	Bilateral	Binding	Adopted
1985	Declaration on Transborder Data Flows	OECD	Regional	Non-binding	Adopted
1986	ECOWAS Supplementary Protocol A/Sp.1/7/86 on the Second Phase (Right of Residence) of the Protocol on Free Movement of Persons, the Right of Residence and Establishment	Economic Community of West African States	Regional	Binding	Adopted
1987	Agreement for the Establishment of a Regime for CARICOM Enterprises	Caribbean Common Market	Regional	Binding	Adopted
1987	Revised Basic Agreement on ASEAN Industrial Joint Ventures	ASEAN	Regional	Binding	Adopted

1987	An Agreement Among the Governments of Brunei Darussalam, the Republic of Indonesia, Malaysia, the Republic of the Philippines, the Republic of Singapore and the Kingdom of Thailand for the Promotion and Protection of Investments	ASEAN	Regional	Binding	Adopted
1988	Free Trade Agreement between Canada and the United States of America	Canada - United States	Bilateral	Binding	Adopted
1989	Fourth ACP-EEC Convention of Lome	African, Caribbean and Pacific countries - European Community	Interregional	Binding	Adopted
1989	Cooperation Agreement between the European Economic Community, of the one part, and the countries parties to the Charter of the Cooperation Council for the Arab States of the Gulf (the State of the United Arab Emirates, the State of Bahrain, the Kingdom of Saudi Arabia, the Sultanate of Oman, the State of Qatar and the State of Kuwait) of the other part	Arab States of the Gulf - European Community	Interregional	Binding	Adopted
1990	Charter on a Regime of Multinational Industrial Enterprises (MIEs) in the Preferential Trade Area for Eastern and Southern African States	Preferential Trade Area for Eastern and Southern African States	Regional	Binding	Adopted
1990	ECOWAS Supplementary Protocol A/Sp.2/5/90 on the Implementation of the Third Phase (Right of Establishment) of the Protocol on Free Movement of Persons, Right of Residence and Establishment	Economic Community of West African States	Regional	Binding	Adopted
1991	Treaty Establishing the African Economic Community	African Economic Community	Regional	Binding	Adopted
1991	Decision 285 of the Commission of the Cartagena Agreement Rules and Regulations for Preventing or Correcting Distortions in Competition Caused by Practices that Restrict Free Trade Competition	Andean Community	Regional	Binding	Adopted
1991	Decision 291 of the Commission of the Cartagena Agreement Common Code for the Treatment of Foreign Capital and on Trademarks, Patents, Licenses and Royalties	Andean Community	Regional	Binding	Adopted

1991	Decision 292 of the Commission of the Cartagena Agreement: Uniform Code on Andean Multinational Enterprises	Andean Community	Regional	Binding	Adopted
1992	Agreement on the European Economic Area	EC - EFTA	Regional	Binding	Adopted
1992	Articles of Agreement of the Islamic Corporation for the Insurance of Investment and Export Credit	Islamic Conference	Regional	Binding	Adopted
1992	North American Free Trade Agreement	Canada, Mexico and the United States	Regional	Binding	Adopted
1993	Framework Cooperation Agreement between the European Economic Community and the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama	EC - Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama	Interregional	Binding	Adopted
1993	Revised Treaty of the Economic Community of West African States (ECOWAS)	Economic Community of West African States	Regional	Binding	Adopted
1993	Framework Agreement for Cooperation between the European Economic Community and the Cartagena Agreement and its Member Countries, namely the Republic of Bolivia, the Republic of Colombia, the Republic of Ecuador, the Republic of Peru and the Republic of Venezuela	EC - Andean Community	Interregional	Binding	Adopted
1993	Treaty Establishing the Common Market for Eastern and Southern Africa	Common Market for Eastern and Southern Africa	Regional	Binding	Adopted
1994	Free Trade Agreement between Mexico and Costa Rica	Mexico – Costa Rica	Bilateral	Binding	Adopted
1994	Treaty on Free Trade between the Republic of Colombia, the Republic of Venezuela and the United Mexican States	Colombia, Venezuela and Mexico	Regional	Binding	Adopted
1994	Protocol of Colonia for the Reciprocal Promotion and Protection of Investments in the MERCOSUR	MERCOSUR	Regional	Binding	Adopted
1994	Protocol on Promotion and Protection of Investments from States not Parties to MERCOSUR	MERCOSUR	Regional	Binding	Adopted

1994	Agreement Among the Governments of the Member States of the Caribbean Community for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income, Profits or Gains and Capital Gains and for the Encouragement of Regional Trade and Investment	Caribbean Community	Regional	Binding	Adopted
1994	Recommendation of the OECD Council on Bribery in International Business Transactions	OECD	Regional	Non-binding	Adopted
1994	Free Trade Agreement of the Group of Three	Colombia, Mexico and Venezuela	Regional	Binding	Adopted
1994	APEC Non-Binding Investment Principles	APEC	Regional	Non-binding	Adopted
1994	Trade and Investment Agreement between the Government of Australia and the Government of the United Mexican States	Australia - Mexico	Bilateral	Binding	Adopted
1994	Energy Charter Treaty	European Energy Charter Organization	Regional	Binding	Adopt
1995	Interregional Framework Cooperation Agreement between the European Community and its Member States, of the one part, and the Southern Common Market and its Party States, of the other part	EC - MERCOSUR	Interregional	Binding	Adopted
1995	ASEAN Framework Agreement on Services	ASEAN	Regional	Binding	Adopted
1995	Osaka Action Agenda on Implementation of the Bogor Declaration	APEC	Regional	Non-binding	Adopted
1996	Protocol to amend the 1987 Agreement among ASEAN Member Countries for the Promotion and Protection of Investments	ASEAN	Regional	Binding	Adopted
1996	Protocol on the Protection of Competition of MERCOSUR	MERCOSUR	Regional	Binding	Adopted
1996	Inter-American Convention Against Corruption	Organization of American States	Regional	Binding	Adopted
1996	Acuerdo de Complementación Económica MERCOSUR - Chile	Chile - MERCOSUR	Regional	Binding	Adopted
1996	Canada - Chile Free Trade Agreement	Canada - Chile	Bilateral	Binding	Adopted
1997	Free Trade Agreement between Mexico and Nicaragua	Mexico - Nicaragua	Bilateral	Binding	Adopted

1997	Protocol Amending the Treaty Establishing the Caribbean Community. Protocol II: Establishment, Services, Capital	Caribbean Community	Regional	Binding	Adopted
1997	Resolution (97) 24 on the Twenty Guiding Principles for the Fight Against Corruption	Council of Europe	Regional	Non-binding	Adopted
1998	Agreement Establishing the Free Trade Area between the Caribbean Community and the Dominican Republic	Caribbean Community - Dominican Republic	Regional	Binding	Adopted
1998	Free Trade Agreement between Chile and Mexico	Chile - Mexico	Bilateral	Binding	Adopted
1998	Decision 439: General Framework of Principles and Rules for Liberalizing the Trade in Services in the Andean Community	Andean Community	Regional	Binding	Adopted
1998	Protocol Amending the Treaty Establishing the Caribbean Community. Protocol III: Industrial Policy	Caribbean Community	Regional	Binding	Adopted
1998	Framework Agreement on the ASEAN Investment Area	ASEAN	Regional	Binding	Adopted
1998	Trade and Investment Cooperation Arrangement between Canada and MERCOSUR	Canada and MERCOSUR	Regional	Binding	Adopted
1998	Memorandum of Understanding on Trade and Investment between the Governments of Canada, Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua	Canada and Central American countries	Regional	Non-binding	Adopted
1998	OECD Council Recommendation on Counteracting Harmful Tax Competition	OECD	Regional	Non-binding	Adopted
1998	OECD Council Recommendation Concerning Effective Action Against Hard Core Cartels	OECD	Regional	Non-binding	Adopted
1998	Draft Multilateral Agreement on Investment	OECD	Regional	Binding	Not adopted
1999	Resolution of the European Parliament on European Union Standards for European Enterprises Operating in Developing Countries: towards a European Code of Conduct	European Parliament	Regional	Non-binding	Adopted

1999	Criminal Law Convention on Corruption	Council of Europe	Regional	Binding	Adopted
1999	OECD Principles of Corporate Governance	OECD	Regional	Non-binding	Approved
1999	Civil Law Convention on Corruption	Council of Europe	Regional	Binding	Adopted
1999	Treaty Establishing the East African Community	East African Community	Regional	Binding	Adopted
1999	Free Trade Agreement between the Governments of Central America and the Government of the Republic of Chile	Chile - Central American countries	Regional	Binding	Adopted
1999	Short-Term Measures to Enhance ASEAN Investment Climate	ASEAN	Regional	Binding	Adopted
2000	Free Trade Agreement between Mexico, El Salvador, Guatemala and Honduras	Northern Triangle	Regional	Binding	Adopted
2000	Revised OECD Declaration on International Investment and Multilateral Enterprises including the Revised Guidelines for Multinational Enterprises	OECD	Regional	Binding non-binding	Adopted
2000	Agreement between New Zealand and Singapore on Closer Economic and Partnership	New Zealand - Singapore	Bilateral	Binding	Adopted
2000	Protocol VIII: Competition Policy, Consumer Protection, Dumping and Subsidies amending the Treaty of Chaguaramas	Caribbean Community	Regional	Binding	Adopted
2000	Revised Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States of the One Part, and the European Community and Its Member States, of the Other Part	African, Caribbean and Pacific countries - European community	Regional	Binding	Adopted
2000	Tratado Sobre Inversion y Comercio de Servicios entre las Repúblicas de Costa Rica, El Salvador, Guatemala, Honduras y Nicaragua	Central American countries	Regional	Binding	Adopted
2001	European Convention on the Legal Protection of Services Based on, or Consisting of Conditional Access	Council of Europe	Regional	Binding	Adopted

2001	Additional Protocol to the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data Regarding Supervisory Authorities and Transborder Data Flows	Council of Europe	Regional	Binding	Adopted
2001	Convention Establishing the European Free Trade Association (Amendment)	EFTA	Regional	Binding	Adopted
2001	Protocol to Amend the Framework Agreement on the ASEAN Investment Area	ASEAN	Regional	Binding	Adopted
2001	Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy	Caribbean Community	Regional	Binding	Adopted
2001	Free Trade Agreement between the Government of Canada and the Government of the Republic of Costa Rica	Canada - Costa Rica	Bilateral	Binding	Adopted
2002	Agreement between Japan and theRepublic of Singapore for a New-ge Economic Partnership (JSEPA)	Japan - Singapore	Bilateral	Binding	Adopted
2002	Tratado de Libre Comercio entre Centroamérica y Panamá	Panama - Central American countries	Regional	Binding	Adopted

Source: UNCTAD. The instruments listed here are reproduced in whole or in part in UNCTAD, *International Investment Instruments: A Compendium*, vols. I, II, III, IV, V, VI, VII and VIII (United Nations publications, sales nos. E.96.II.A.9.10.11, E.00.II.D.13. 14, E.01.II.D.34, and forthcoming).

[a] The list includes bilateral free trade agreements containing investment provisions. BITs and double taxation treaties are not included in this table. For an up-to-date list of BITs, as of 1 January 2000, see *UNCTAD (2000a)*. The list of bilateral association, partnership and cooperation agreements signed by the European Community, by the European Free Trade Association, by the United States and by Canada with third countries, containing investment provisions, is to be found in the appendix.

[b] Dates given relate to original adoption. Subsequent revisions of instruments are not included, unless explicitly stated.

[c] The OECD Declaration on International Investment and Multinational Enterprises is a political undertaking supported by legally binding Decisions of the Council. The Guidelines on Multinational Enterprises are non-binding standards.

Appendix. Bilateral association, cooperation, framework and partnership agreements, that include investment-related provisions, signed by the European Community, by the European Free Trade Association, by the United States and by Canada with third countries (April 2002)

Country/territory/group of countries	Date of signature	Date of entry into force
European Community and its member States		
Malta	5 December 1970	1 April 1971
Jordan	18 January 1977	1 January 1979
Syrian Arab Republic	18 January 1977	1 January 1978
Lebanon	3 May 1977	1 November 1978
China	21 May 1985	1 October 1985
Pakistan	23 July 1985	1 May 1986
Argentina	2 April 1990	...
Uruguay	4 November 1991	1 January 1994
Hungary	16 December 1991	1 February 1994
Poland	19 September 1989[a]	...
Poland	16 December 1991	1 February 1994
San Marino	16 December 1991	Not yet in force
Albania	11 May 1992	1 December 1992
Mongolia	16 June 1992	1 March 1993
Brazil	26 June 1992	1 November 1995
Macao	5 June 1992	Not yet in force
Romania	22 October 1990[a]	...
Romania	February 1993	1 February 1995
Czechoslovakia	16 December 1991[a]	...
Czech Republic	4 October 1993	1 February 1995
Bulgaria	May 1990[a]	...
Bulgaria	8 March 1993	1 February 1995
Slovakia	4 October 1993	1 February 1993
India	23 June 1981[a]	...
India	20 December 1993	1 August 1994
Ukraine	14 June 1994	1 March 1998
Soviet Union	8 December 1989[a]	
Russian Federation	24 June 1994	1 December 1997
Sri Lanka	2 July 1975[a]	
Sri Lanka	18 July 1994	2nd trimester 1995
Republic of Moldova	28 November 1994	1 July 1998
Kazakhstan	23 January 1995	1 July 1999
Kyrgyzstan	9 February 1995	1 July 1999
Belarus	6 March 1995	Not yet in force
Turkey	12 September 1963[a]	1 December 1964
Turkey	6 March 1995	Not yet in force
Latvia	11 May 1992[a]	1 February 1993
Latvia	12 June 1995	1 February 1998
Lithuania	11 May 1992[a]	1 February 1993
Lithuania	12 June 1995	1 February 1998

Country/territory/group of countries	Date of signature	Date of entry into force
European Community and its member States		
Estonia	11 May 1992[a]	1 March 1993
Estonia	12 June 1995	1 February 1998
Tunisia	25 April 1976[a]	1 November 1978
Tunisia	17 July 1995	1 March 1998
Viet Nam	17 July 1995	1 June 1996
Israel	11 May 1975	1 July 1975
Israel	20 November 1995	... June 2000
Nepal	20 November 1995	1 June 1996
Morocco	27 April 1976	1 November 1978
Morocco	26 February 1996	...
Armenia	22 April 1996	1 July 1999
Azerbaijan	22 April 1996	1 July 1999
Georgia	22 April 1996	1 July 1999
Slovenia	5 April 1993	1 September 1993
Slovenia	10 June 1996	1 February 1999
Chile	21 June 1996	1 February 1999
Uzbekistan	21 June 1996	Not yet in force
Republic of Korea	28 October 1996	...
Cambodia	29 April 1996	1 November 1999
Lao People's Democratic Republic	19 April 1997	1 December 1997
The Former Yugoslav Republic of Macedonia	29 April 1997	1 January 1998
Turkmenistan	25 May 1998	Not yet in force
South Africa	11 October 1999	Not yet in force
Mexico	26 April 1991	1 November 1991
Mexico	8 December 1997	1 January 2000
Mexico	27 February 2001	1 March 2001
Egypt	18 January 1977	1 January 1979
Egypt	30 April 2001	...
Algeria	26 April 1976	1 January 1978
Algeria	22 April 2002	...
European Free Trade Association and its member States		
Turkey	10 December 1991	1 April 1992
Israel	17 September 1992	1 January 1992
Poland	10 December 1992	1 September 1993
Romania	10 December 1992	1 May 1993
Bulgaria	29 March 1993	1 July 1993
Hungary	29 March 1993	1 October 1993
Czech Republic	20 March 1992	1 July 1992[b]
Slovak Republic	20 March 1992	1 July 1992[b]
Slovenia	13 June 1995	1 September 1998
Estonia		1 October 1997
Latvia	7 December 1995	1 June 1996
Lithuania	7 December 1995	1 January 1997
Morocco	19 June 1997	1 December 1999
Palestinian Authority	30 November 1998	1 July 1999

Country/territory/group of countries	Date of signature	Date of entry into force
The Former Yugoslav Republic of Macedonia	19 June 2000	1 January 2001
Mexico	27 November 2000	...
Croatia	21 June 2001	...
Jordan	21 June 2001	...
United States		
Morocco	18 February 1985	...
Egypt	1 July 1999	1 July 1999
Egypt[c]	1 July 1999	1 July 1999
Ghana	26 February 1999	26 February 1999
South Africa	18 February 1999	18 February 1999
Turkey	29 September 1999	11 February 2000
Jordan	24 October 2000	24 October 2000
Nigeria	16 February 2000	16 February 2000
Viet Nam	13 July 2000	...
Canada		
Australia	15 November 1995	...
Norway	3 December 1997	...
Switzerland	9 December 1997	...
Iceland	24 March 1998	...
MERCOSUR	16 June 1998	...
South Africa	24 September 1998	...
Andean Community	31 May 1999	...

Source: UNCTAD.

... Information not available.

[a] No longer in force.

[b] Signed with the former CSFR on 20 March 1992. Protocols of the succession of the Czech Republic and the Slovak Republic were signed and entered into force on 19 April 1993 simultaneously.

[c] Investment Incentive Agreement between the Government of the United States and the Government of the Arab Republic of Egypt.